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ART. I.—THE AMERICAN CONSTITUTION.

THE American Constitution was the production of the most intelligent minds of our country at the period of its formation. It was not in any sense the result of inventive genius; for its main features had been suggested by the experience of the thirteen Colonies both during and before the confederation. When we compare it with the British Constitution, with the Articles of Confederation, and with the different colonial governments, we shall be surprised to find how little there is in it that was new. The particulars in which the new government differed from that of the Confederation had been suggested by the very brief experience of a few years under the latter government. And, while we admit with the greatest pleasure the wisdom and the ability of the framers of the Constitution, we are driven to admit also their fallibility, and that in many respects they failed to see what was in the future, and to provide for the contingencies of after years. One of the chief difficulties they experienced was in the creation of an executive; and after the subject had been long considered, the plan adopted, of a choice by electors, was hastily conceived, and incorporated without mature consideration.

The framers of the Constitution were very conservative democrats, if democrats they might be called. While professing theoretically to believe in the natural rights of men, and in a government by the people, they entertained a profound distrust of the capacity of the people to govern themselves; and consented to

bring the new government directly to the people only in one department, — the election of members of the House of Representatives. By recognizing the necessity of an elective executive, and putting away with aversion the idea of a monarchy, they yet sought to place the executive as far from the people as possible. They accordingly devised the scheme of the electoral college, the members of which were to be chosen in a manner prescribed by the legislatures of the several States. The debates in the convention and the newspaper comments of the period show that it was not contemplated that the legislatures should submit the appointment of electors to a vote of the people. That was an afterthought, and was adopted by the States gradually, — South Carolina, up to the beginning of the Rebellion, continuing to choose her electors by the legislature. The theory of the electoral college was, that it would be composed of a body of select men, chosen on account of their wisdom and high character, who should be entirely uncommitted and untrammelled in their action, and meet, deliberate, and vote with perfect independence. And, to secure their independence, it was provided that they should vote by ballot, so that one should not know how the others voted. Not only were they not expected to be pledged in advance to vote for a particular candidate, but the precise theory of their creation was, that they should not be so pledged, but remain perfectly free and uncommitted, to do what their sound judgment dictated, when they came together to choose a President. How completely this theory has failed in practice requires no comment. The practice has contradicted the theory for the last sixty years in every particular. The electors are put in nomination by parties, and are pledged to vote for a particular candidate; and should one of them, after election, betray this pledge, he would be regarded by all parties as infamous. Experience has curiously shown that this departure from the original theory is the very best feature in the electoral system, as now practised, and is the only guaranty against the corruption of the elector. The Constitution further provided, that in case no person received a majority of the votes of all the electors appointed, the House of Representatives should proceed to elect, voting by States, — each State having one vote, without regard to population, or to the number of representatives in the House. New York, having a population forty-six times

greater than Nevada, would have but one vote, — Nevada having one.

This election was to be made by the members of the House, who had been elected nearly two years before, and who could not be supposed to represent the latest expression of the popular will. Thus the choice of the President was removed as far as possible from the people, to have the office elective at all. The Constitution provides, that the Judges of the Supreme Court shall hold their offices during good behavior, that the Senators shall be chosen by the legislatures of the States, and not by the people, thus removing their choice as far as possible from popular passion and control. The only department of the government in which the voice of the people was to be directly expressed was in the election of Representatives. The framers of the Constitution did not believe that it was safe to trust the people directly with the administration of the government, except in a very limited degree. They had been educated in the fear of democracy, and while asserting in the Declaration of Independence their belief in the natural rights of man, and that government should exist only by the consent of the governed, they afterward showed how theoretical and shadowy their notions upon that subject were, by permitting the continuance of slavery, and giving to it constitutional guaranties, and by so constructing the government as to leave the people out as far as possible. The framers of the Constitution were masters of the English language. Perhaps no instrument has been framed in modern times, in which words were used with so much precision, and in which so much has been embraced in a comparatively few sentences. They were consummate masters of words, and the debates in the convention show the remarkable care and accuracy displayed in the selection of a word intended to convey a particular idea, but not liable to misconstruction or mistake. In other respects the wisdom of the framers of the Constitution has not been so conspicuous. The events of a hundred years have shown that their fears of democracy were not well grounded, and that the true dangers to our institutions lay in other directions than those which were ever present in their minds. What is true in architecture is true under our system of government, — the broader the base, the safer and more enduring the structure. The great body of the American people are incapable of corruption. They are too

numerous to be bought, and too virtuous to be reached by any sinister influence to which they may be exposed. While the means of corruption may be abundant enough to reach and control a select body of three or five hundred men, they amount to nothing when brought to bear upon millions. The masses of the people are liable to be imposed upon, it is true, but their purpose is always right, though their policy may sometimes be wrong; they intend to do right, and to advocate those measures which will result in the popular good; and if they fail to do so, it is because they are imposed upon, or have not the proper information. The freedom of speech and of the press is the great guaranty for our liberty and prosperity. A comparatively few intelligent men upon each side of political questions, wielding the power of the former, or of the press, put parties upon an equality, and protect them to a great extent from the dangers of imposition and fraud. Just as able attorneys put an intelligent and an ignorant suitor on substantially the same footing before the jury, so do freedom of speech and of the press, while not at all compensating for the ignorance of the masses, place parties on an equality, and protect the people in the main from imposition and wrong. The instinct and the purpose of the masses being honest and in the right direction, politicians are compelled to recognize that fact and address themselves to it, and could not, if they tried, for any great length of time, palm a fraudulent policy upon them. There is no community so ignorant as to be for any length of time successfully imposed upon by fraudulent promises and measures. The degree of common sense is everywhere about the same. There will be found in every county and in every neighborhood some men of sufficient intelligence to take a generally correct view of what is right and what is to their interest.

Another fact which the enemies of republican government in Europe have been slow to recognize, is the conservatism of the masses of the American people. The enemies of republicanism have through centuries opposed it, upon the ground that the people are governed by passion and impulse, variable in their notions, pulling down to-morrow what they built up to-day, and incapable of a steady purpose or policy. The experience of a hundred years with the American people has demonstrated the fact that the great mass are opposed to change,—are steady, conservative, and con-

sistent in their views, and will not consent to any alteration in the fundamental plan of government, except upon the clearest convictions, established by long experience, of the necessity for a change. While we have new schemes of government and of civil and social polity springing up among those who claim to be the educated and learned members of society, and in fact are, these proposed changes hardly ever reach or affect the people. These schemes spring up, one after the other, and are usually very short-lived. New schools are formed in politics and philosophy among those who assume to constitute the upper classes of society, and succeed each other in quick succession; yet the great mass of the people are unaffected by them. It is undoubtedly true, in this country, that the great middle class, comprehending the large majority of the American people, are the conservative, preserving class, — the balance-wheel in our political machine, keeping it in steady motion, rejecting new schemes and sudden policies; while the restlessness and the spirit of change, which have always been the argument against republican government, exist chiefly in that class who claim to be above the people, and superior to the masses.

The late election for President showed not only that the great purpose for which the electoral college was originally created had utterly failed, but that it is artificial, complex, liable to derangement and accident, and gives rise to a number of questions which may decide the result of an election, and yet have no connection with the merits of the controversy. The Constitution provides that no person holding an office of trust or profit under the United States shall be appointed an elector; the object being to preserve the independence of the electors and their total separation from government influences in the discharge of their duties. The system in actual use, by which electors are pledged before their election to vote for particular candidates, renders all questions of eligibility unimportant, and yet the fact that an elector in Oregon held a very unimportant post-office on the day of his election gave rise to great trouble, anxiety, and prolonged discussion. Like questions were raised as to the eligibility of an elector in Florida, on account of his having held a small office, and another in Louisiana, — offices unimportant and almost wholly unknown to the people at the time of the election, — and came near deciding the final result. Experience, as well as reason, now suggests that the rubbish of the elec-

toral college be brushed away entirely, and the people allowed to vote directly for the man of their choice for President and Vice-President. Now the people cannot vote for him, but must vote for others who are pledged to vote for him. All this requires that there shall be political conventions or caucuses, which shall place in nomination the persons to be voted for as electors, so that all the people of the same way of thinking may vote for the same candidates for electors.

Considerations showing that the electoral college is not only useless, but dangerous, and that it has never yet faithfully represented the people, but has often misrepresented them, will be the subject of another paper.

OLIVER P. MORTON.